

STATE OF MICHIGAN
COURT OF APPEALS

DENISHIO JOHNSON,

Plaintiff-Appellant,

v

CURTIS VANDERKOOI, ELLIOTT BARGAS,
and CITY OF GRAND RAPIDS,

Defendants-Appellees.

FOR PUBLICATION
November 21, 2019

No. 330536
Kent Circuit Court
LC No. 14-007226-NO

KEYON HARRISON,

Plaintiff-Appellant,

v

CURTIS VANDERKOOI and CITY OF GRAND
RAPIDS,

Defendants-Appellees.

No. 330537
Kent Circuit Court
LC No. 14-002166-NO

Advance Sheets Version

ON REMAND

Before: BOONSTRA, P.J., and O’BRIEN and LETICA, JJ.

LETICA, J. (*concurring*).

I reluctantly concur. Reviewing the federal and state caselaw relied upon by the majority, I cannot disagree with the majority’s conclusion that photographing and fingerprinting are not searches under the Fourth Amendment. I am likewise constrained by this Court’s prior decisions

and by the plaintiffs' earlier framing of the issues to address their current claim as solely a facial challenge.¹ Were I not bound by these limitations, I would reach a different conclusion.²

/s/ Anica Letica

¹ I was not a member of the panel that decided these cases in the original appeals.

² The city has since modified its P&P policy to require a *Terry* detainee's consent before fingerprinting him or her and to recognize the protections afforded under the Child Identification and Protection Act, MCL 722.771 *et seq.* See *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). The act prohibits a governmental unit from fingerprinting a child with limited exceptions. MCL 722.773; MCL 722.774. A governmental unit includes "any political subdivision of the state" as well as "an authorized representative of . . . any political subdivision of the state[.]" MCL 722.772(e). A child is "any person under 17 years of age." MCL 722.772(a). The act permits a governmental unit to "fingerprint a child if fingerprints are voluntarily given with the written permission of the child and parent or guardian, upon the request of a law enforcement officer, to aid in a specific criminal investigation." MCL 722.774(1)(d). "Only 1 set of prints shall be taken and, upon completion of the investigation, the law enforcement agency shall return the fingerprint cards to the parent or guardian of the child." *Id.*